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SUBJECT: Vietnam: Implementation of BTA Customs Obligation

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REF: (A) 03 HANOI 2795 (B) Hanoi 821

11. (U) Summary: The GVN has taken significant steps toward implementing the U.S.-Vietnam Bilateral Trade Agreement (BTA) obligation to adopt a system of customs valuation based on the transaction value of the imported merchandise, according to GATT standards. At this time, the GVN is applying the new valuation method only to goods imported from the U.S. and ASEAN, (as well as for goods imported by foreign invested enterprises.) GVN steps include adopting key implementing regulations, issuing a new (additional) declaration form for importers, and training local customs officials. As expected, however, application of the new regulations at the ports of entry appears uneven. Also, in a move inconsistent with the terms of the BTA, the GVN is continuing to use minimum prices for valuation purposes on some products. End summary.

GVN Adopts Regulations Implementing Transaction Value

12. (U) According to the terms of the BTA, the GVN was obligated by December 10, 2003 to adopt a system of customs valuation based on the transaction value of the imported merchandise, rather than arbitrary reference or minimum prices. In June 2002, the GVN issued Decree 60 establishing rules for customs valuation based on the transaction value of goods imported from countries to which Vietnam has made a commitment on customs valuation. On December 8, 2003 the Ministry of Finance (MOF) issued Circular 118, the implementing regulations for Decree 60. In addition, the General Department of Customs issued Official Letter 1774 on February 29, 2003 providing additional instructions to local Customs offices on how to implement Circular 118. (Note: Embassy was unable to obtain a copy of 1774 as official letters are not published in the Official Gazette and the MOF refused to provide it upon request. End note.)

13. (U) To assist in the implementation of the Circular, The General Department of Customs in Hanoi disseminated copies of the new regulations and guidelines to customs offices throughout Vietnam and provided training on the new regulations in Hanoi for customs officials from provincial offices. Additionally, provincial customs offices carried out some in-house training for their staff and, in some areas, provided training to Vietnamese importers on how to work within the new regulations.

14. (SBU) In real terms, the new regulations have not resulted in significant uniform changes in the procedures and practices of local customs officials. To implement the changes in valuation, customs issued a new form that importers must fill out when bringing in goods of U.S. or ASEAN origin. The new form appears to have been well circulated, as most importers Econoffs talked to were familiar with the form. In Ho Chi Minh City, at least one customs office created a designated area for processing goods imported from the U.S. and ASEAN. However, in other smaller ports, such as Hai Phong and Mong Cai (on the Chinese border) customs offices have not have made any changes to their internal procedures to address the fact that they are using two kinds of valuation systems. They have not divided their officers into teams or even set up different lines for companies declaring goods eligible for the new valuation method. Also, the GVN remains committed to upgrading, retaining, and relying on its reference price list for detecting fraud. One World Bank official commented to Econoff that the GVN appears to be taking an overly simplified approach to revamping its customs operations.

Despite BTA, Exceptions Remain

15. (U) Despite the fact that the BTA does not provide for

any exceptions for the application of transaction value, Decree 60 reserved the right for the GVN to use minimum prices for the purpose of calculating duties on a number of items "in order to protect the State's interests and domestic production." On February 4, 2004 the Ministry of Finance issued Official Letter 393 providing specific instructions on the application of minimum prices. This Official Letter instructed customs officials to continue using minimum prices on a specific list of products (whose import prices are controlled by the State) - regardless of whether or not these goods are subject to Circular 118. The list referred to in Official Letter 393 was originally published in MOF Decision 164 in October 2000 and includes the following items: 1) assorted beverages; 2) tires, pneumatic inner tubes and fenders; 3) wall and floor tiles, sanitary ware (toilets, sinks, urinals, wash basins and bath tubs); 4) flat glass, white, colored and light-reflecting glass, water flasks and vacuum inner flasks; 5) motors, generators (not those used for cars, motorbikes or other special use vehicles); 6) electric fans; and motorcycles.

16. (SBU) In a meeting with Ha Huy Tuan, Deputy Director of the International Relations Department at the MOF in early March, Econoff questioned the GVN's decision to maintain the use of minimum prices. Tuan (who did not argue the point that the BTA does not provide for any exceptions on customs valuation) explained to Econoff that Official Letter 393 is a temporary measure until the MOF can finalize a new, revised list of goods subject to minimum prices. The purpose of establishing this new list, according to Tuan, is to target high fraud-risk goods and companies. The General Department of Customs, in coordination with local customs offices is in charge of drafting the list. Customs has submitted several versions to the MOF, all of which have been rejected. The MOF sees the minimum price list as a "very serious issue" Tuan added and is working hard to identify the priority areas - that is why it is taking so long to finalize the list.

17. (SBU) Econoff reiterated that the current list of exceptions - and any future list - contradicts Vietnam's obligations under the BTA. Econoff stressed that this is a serious issue, particularly given the fact that U.S. products are being disadvantaged by the GVN decision not to fully meet its BTA obligations. Econoff cited imports of U.S. wines as an example, noting that Vietnamese wine importers have complained to U.S. officials about Customs decision to maintain minimum prices as the basis for calculating import duties on U.S. wines. Tuan took the point and promised to convey the message to the Vice Minister of Finance. (Note: Although, as reported ref B, on March 16 Minister of Trade Tuyen told Ambassador that if the MOF is not applying transaction value to all U.S. imports in accordance with the BTA, he would tell MOF to "fix" the problem, nothing has changed as yet. End note.)

Survey of Companies' Experiences

18. (SBU) Econoffs met with a number of companies in Ho Chi Minh City in February to discuss their experiences with implementation of the new customs obligations. While it was quite soon after implementation of the new regulations, these companies provided a useful snapshot of the results of the GVN's early efforts at implementation.

-- Local companies: Local companies that import significant amounts of goods from the U.S. and/or ASEAN appear to have had the most success in using the new customs valuation procedures, so far. Representatives of a number of Vietnamese companies were well read on the new regulations and familiar with the new form. They told Econoffs that duties on their imports are now consistently assessed based on the invoice price, even if that price is lower than the GVN's reference price. It should be noted however, that most of these companies are very familiar with local customs procedures. They said they are also generally accustomed to paying "facilitation fees" at each step of the clearance process, which may have directly or indirectly increased Custom's willingness to apply transaction value for their imports.

-- U.S. companies: Econoffs talked to representatives from a number of large U.S. companies doing business in Vietnam. On the whole they did not yet have a strong sense of the impact of new customs procedures on their businesses. Some of these companies were only vaguely aware of the new regulations and many had not seen the new customs form. The owner of one U.S.-owned company, who has been doing business in Vietnam for more than ten years, told Econoffs that in terms of customs valuation nothing has changed for him since passage of the new regulations. Customs generally charges duties on his shipments based on the higher of the invoice or the reference price. Another U.S. company that imports pet food from factories in the ASEAN area was told by HCMC customs that pet foods are not eligible for transaction

value. Pet foods are not on the minimum price list so it is unclear where this "rule" may have come from. The representative of another U.S. company told Econoffs his company always get invoice pricing, but noted their invoices are always above the GVN's reference prices.

-- Fed Ex: Fed Ex has customs officers that are assigned to work at the Fed Ex warehouse to assess the value of packages. According to the local Fed Ex representative, there has been no change in the process since implementation of the new regulations. In practice, the Customs officers continue to use the higher of the reference or the invoice price to calculate the duty. Fed Ex has submitted a written request to Ho Chi Minh City Customs asking them to begin using the transaction value. About eighty percent of Fed Ex's packages are from either the U.S. or ASEAN countries.

-- Wine/Spirits importers: As noted above, currently wine importers are not benefiting from implementation of transaction value. Per Official Letter 393, Vietnamese customs is still using minimum prices as the basis for calculating import duties on beverages imported from the U.S. and ASEAN. The end result of this is that U.S. wines have been disadvantaged significantly in comparison to imports of EU wines. The tariff on imports of EU wines was reduced twenty percent in February (see ref B) and European wines are also exempt from the use of minimum prices. (Note: As with the tariff reductions, the exemption of certain EU imports from the application of minimum prices is a by-product of the EU-Vietnam "Textile" agreement. End note.) U.S. wines, however, are charged the higher duty rate on either the minimum price or invoice price (whichever is higher). (Note: U.S. wine imports are supposed to start getting the lower duty rate no later than May 1. End note.) Wine importers are not allowed to use the new customs form because wine is on the list of state-controlled items.

19. (SBU) Comment: The GVN should be praised for the efforts it has taken to put in place a solid legal framework for fulfilling its BTA customs obligations. We are not surprised, however, that application is uneven, given the GVN's ongoing concerns about revenues, the pervasive corruption at all levels in customs, and a lack of capacity in terms of both human resources and infrastructure. Only time will tell if the GVN will be successful at ensuring full implementation at all ports of entry. The GVN's decision to maintain dual systems (one for U.S. and ASEAN and one for everyone else) is problematic, as it will likely hinder efforts to change customs officials' mindset and approach to valuation. Additionally, the GVN decision to carve out "exceptions," not identified in the BTA is worrisome. Post recommends including a detailed discussion of customs in the agenda of the next U.S.-Vietnam BTA Joint Committee meeting this spring.

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